

Appendix D to DIR CONTRACT NO. DIR-TSO-3793
Foundation Agreement
US Public Sector (Direct)

1. INTRODUCTION

- 1.1 This Foundation Agreement ("Foundation Agreement") between CA, Inc., located at One CA Plaza, Islandia, New York 11749, ("CA"), and Customer, located at Customer address, ("Customer"), is effective [insert date] and specifies the terms and conditions agreed between the Parties as a foundation for their relationship as further defined in the applicable Modules. This Agreement and DIR Contract No. DIR-TSO-3793 sets forth the terms and conditions under which Customer may license certain programs and maintenance support services pursuant to separately executed Transaction Documents (the "Transaction Documents") and as further defined in the applicable Modules. In the event of conflict between the terms of this Agreement and DIR Contract No. DIR-TSO-3793, the DIR's contract terms shall control.
- 1.2 The Foundation Agreement may incorporate any Module that is attached hereto or signed separately by the Parties.
- 1.3 Modules attached to this Foundation Agreement as are as follows: Exhibit 1: The Software Module, Exhibit 2: The Services Module, and Exhibit 3: The SaaS Module.

2. DEFINITION

- 2.1 "Affiliate" with respect to Customer means any legal entity in which the Customer directly or indirectly Controls.
- 2.2 "Agreement" means this Foundation Agreement, the applicable Module and applicable Transaction Document, and any document incorporated expressly therein by reference.
- 2.3 "CA Offering" means the individual offering (such as software, services, software as a service etc.) made available by CA as defined in the Module and/or Transaction Document.
- 2.4 "Confidential Information" Confidential Information shall be subject to Appendix A, Section 10.H. to the DIR Contract No. DIR-TSO-3793. All information marked as proprietary, confidential, or otherwise shall be subject to the provisions of Appendix A, Section 10.H. of the DIR Contract No. DIR-TSO-3793.
- 2.5 "Control" means ownership or control of greater than 50% of an entity's shares or control the board of such entity by force of law or contract, or the equivalent.
- 2.6 "Documentation" means the documentation, technical product specifications and/or user manuals, published by CA or any entity within CA group of companies (each a CA entity) that is made generally available with CA Offerings.
- 2.7 "Module" means the additional terms and conditions applicable to the CA Offering.
- 2.8 "Parties" means individually and or collectively CA and or the Customer.
- 2.9 "Term" means, with respect to each Transaction Document, the period during which the CA Offering is provided, licensed or granted.
- 2.10 "Transaction Document" means a signed mutually agreed ordering document such as a CA order form or statement of work, or in the alternative, may be a Customer-issued purchase order, referencing a CA order form, quote/proposal, or statement of work for the specific CA offering licensed or purchased.

3. ORDERING AND DELIVERY

- 3.1 Under the terms of this Agreement, Customer may purchase and CA shall provide the specific CA Offering in a Module signed by the Parties.
- 3.2 Per Appendix A, Section 4.B. 3) of the DIR Contract No. DIR-TSO--3793, acceptance criteria and delivery will be determined on a Transaction Document for each order.

4. CONFIDENTIAL INFORMATION

Confidentiality shall be in accordance with Section 10.H. of Appendix A to the DIR Contract No. DIR-TSO-3793. All information marked as proprietary, confidential, or otherwise shall be subject to the provisions of Appendix A, Section 10.H. of the DIR Contract No. DIR-TSO-3793.

5. FEES

All fees and payments shall be in accordance with Appendix A, Section 8 of the DIR Contract No. DIR-TSO-3793.

6. TITLE

- 6.1 CA retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all CA Offerings and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

7. WARRANTY

- 7.1 Each Party represents and warrants that it has the legal power to enter into the Agreement.
- 7.2 CA represents and warrants that it owns or otherwise has sufficient rights to grant Customer the rights defined in any Transaction Document during the Term.

8. INDEMNIFICATION

Indemnification shall be in accordance with Appendix A, Section 10. A. of the DIR Contract DIR-TSO-3793.

9. LIMITATION OF LIABILITY

Limitation of Liability shall be in accordance with Appendix A, Section 10.K. of the DIR Contract DIR-TSO-3793.

10. TERM & TERMINATION

- 10.1 Termination of this Foundation Agreement shall be in accordance with Appendix A, Section 11.B. to the DIR Contract No. DIR-TSO-3793.
- 10.2 In the event Customer elects to terminate a Transaction Document for convenience prior to the expiration of the then current term, and such transaction document includes licenses for CA software, Customer shall also, within a reasonable period of time, delete all copies of such software from its systems, and either destroy or return them to CA except the Customer may keep any copies which would be required to comply with records retentions laws. The foregoing shall not apply, however, where such licenses were perpetual and Customer, at the time of such termination, has paid all associated perpetual license fees.

11. DISPUTE RESOLUTION

Dispute Resolution shall be in accordance with Appendix A, Section 11.A. to the DIR Contract No. DIR-TSO-3793.

12. GENERAL TERMS

- 12.1 **Amendments.** The terms of the Agreement may only be amended by mutual written agreement of the Parties.
- 12.2 **Force Majeure.** Force Majeure shall be in accordance with Appendix A, Section 11.C. to the DIR Contract No. DIR-TSO-3793.
- 12.3 **Order of Precedence.** Any conflict or inconsistency among or between the terms and conditions of the documents comprising the Agreement shall be resolved according to the order of precedence as set for in Section 1.C. of Contract No. DIR-TSO-3793.. DIR-TSO-3793.
- 12.4 **Customer Data.** If Customer transfers any personal data to CA as a requirement pursuant to any CA Offering, then Customer represents that (i) it is duly authorized to provide personal data to CA and it does so lawfully in compliance with relevant legislation, (ii) CA and any entity within the CA group of companies (each a "CA entity") or its subcontractors can process such data for the purposes of performing its obligations and (iii) CA may disclose such data to any CA entity and its subcontractors for this purpose. In regard to SaaS, at all times, Customer Data shall remain exclusively within the continental United States unless expressly stated otherwise in the Transaction Document. In regard to technical support, the parties acknowledge that as part of CA's support offerings, CA offers customer 24/7 support using the follow-the-sun method. In doing so, certain CA may provide telephone support from various locations globally. The CA personnel providing call or contact center services to Customer shall disclose to inbound callers the location from which the call or contact center services are being provided upon request by the inbound caller.
- 12.5 **Import/Export.** Customer agrees that CA Offerings, Documentation, and or Confidential Information is subject to export controls of the United States of America and import controls of any other country in which such information may be used. Customer agrees to export, re-export or import such information only in compliance with such laws and controls.
- 12.6 **Counterparts.** This Foundation Agreement, any Module and any Transaction Document as applicable may be signed in any number of counterparts and each part shall be considered part of the whole and valid, legally binding document.
- 12.7 **Notice.** All notices hereunder shall be in accordance with Appendix A, Section 12 to the DIR Contract No. DIR-TSO-3793.
- 12.8 **Headings.** The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.
- 12.9 **Validity.** In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.



12.10 **Third Parties.** This Agreement shall not create any rights in favor of, or any obligations owed by, any third Party unless otherwise expressly defined in any Module. The Parties agree that any action arising from this Agreement shall solely be brought by Customer or CA.

12.11 **Choice of Law.** The laws of the State of Texas (excluding its conflict of law provisions) shall govern this Agreement. The parties agree that any action arising under or relating to this Agreement shall lie within the exclusive venue of the State Courts located in Travis County, State of Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

12.12 **Survival.** Sections pertaining to, Title, and Import/Export shall survive termination of this Foundation Agreement.

12.11 **Entire Agreement.** The DIR Contract No. DIR-TSO-3793, this Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Agreement. In the event of a conflict between this Agreement and the DIR Contract No. DIR-TSO-3793, the DIR Contract controls.

12.12 **Signature.** The Parties have caused this Foundation Agreement to be executed by their duly authorized representatives as identified below.

Customer

CA, Inc.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____